

State of California
Department of Fish and Wildlife



Memorandum

Date: August 5, 2020

To: Ms. Terry Ash
California Department of Veterans Affairs
Department of General Services
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Governor's Office of Planning & Research

Aug 06 2020

STATE CLEARINGHOUSE

DocuSigned by:

Gregg Erickson

From: Mr. Gregg Erickson, Regional Manager

California Department of Fish and Wildlife-Bay Delta Region, 2825 Cordelia Road, Suite 100, Fairfield, CA 94534

Subject: Rector Reservoir Bypass Valve Project, Notice of Preparation of a Draft Environmental Impact Report, SCH No. 2020070017, Town of Yountville, Napa County

The California Department of Fish and Wildlife (CDFW) reviewed the Notice of Preparation (NOP) of a draft Environmental Impact Report (EIR) provided by the California Department of Veterans Affairs (CalVet) for the Rector Reservoir Bypass Valve Project (Project), located at the Rector Dam just east of the Town of Yountville, Napa County.

CDFW is commenting on the NOP as a trustee agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 15386). CDFW has the following concerns, comments, and recommendations regarding the Project.

ENVIRONMENTAL SETTING

Sufficient information regarding the environmental setting is necessary to understand the Project's potentially significant impacts on the environment (CEQA Guidelines, §§ 15125, 15360). CDFW recommends that the draft EIR provide baseline habitat assessments for any special-status plant, fish, and wildlife species known to occur in the vicinity of the Project area, including all rare, threatened, or endangered species (CEQA Guidelines, § 15380). Fully protected, threatened, endangered, and other special-status species that are known to occur, or have the potential to occur in or near the Project site, include, but are not limited to:

- White-tailed kite (*Elanus leucurus*), a fully protected species under Fish and Game Code section 3511;
- Steelhead (*Oncorhynchus mykiss*), threatened under the federal Endangered Species Act;
- Foothill yellow-legged frog (*Rana boylei*), a California (State) Species of Special Concern (SSC);
- Western pond turtle (*Actinemys marmorata*), SSC;

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- Greene's narrow-leaved daisy (*Erigeron greenei*), California Rare Plant Rank 1B.2, protected under CEQA (Pub. Resources Code, § 15380);
- Napa bluecurls (*Trichostema ruygtii*), California Rare Plant Rank 1B.2, protected under CEQA (Pub. Resources Code, § 15380);
- Sonoma beardtongue (*Penstemon newberryi* var. *sonomensis*), California Rare Plant Rank 1B.3, protected under CEQA (Pub. Resources Code, § 15380); and
- Holly-leaved ceanothus (*Ceanothus purpureus*) California Rare Plant Rank 1B.2, protected under CEQA (Pub. Resources Code, § 15380).

Habitat descriptions and species profiles should include information from multiple sources, such as, aerial imagery, historical and recent survey data, field reconnaissance, scientific literature and reports, and findings from "positive occurrence" databases such as California Natural Diversity Database. Based on the data and information from the habitat assessment, the draft EIR can then adequately assess which special-status species are likely to occur in the Project vicinity.

CDFW recommends that prior to Project implementation, surveys be conducted for special-status species with potential to occur, following recommended survey protocols if available. Survey and monitoring protocols and guidelines are available at: <https://www.wildlife.ca.gov/Conservation/Survey-Protocol>.

Botanical surveys for special-status plant species, including those listed by the California Native Plant Society (<http://www.cnps.org/cnps/rareplants/inventory/>), must be conducted during the blooming period for all sensitive plant species potentially occurring within the Project area and require the identification of reference populations. Please refer to CDFW protocols for surveying and evaluating impacts to rare plants available at: <https://www.wildlife.ca.gov/Conservation/Plants>.

PROJECT DESCRIPTION

In response to a complaint filed against CalVet for failing to allow sufficient water to pass Rector Dam to keep fish below the dam in good condition as required by Fish and Game Code section 5937, CalVet agreed to implement minimum flow release requirements for lower Rector Creek and to construct the infrastructure to facilitate these releases. A preliminary instream flow study titled, *Rector Creek Preliminary Instream Flow and Stream Habitat Assessment*, prepared by Stillwater Sciences in December 2018, was conducted to provide guidance to establish an interim minimum flow release schedule at the dam. As part of the Project, further data collection and analysis will occur to establish an effective and sustainable long-term minimum flow release schedule. To accomplish these releases, CalVet intends to install a bypass water pipe and outfall structure to deliver water from the reservoir into the creek at a point immediately downstream of the dam.

The CEQA Guidelines (Cal. Code Regs, tit. 14, §§ 15124, 15378) require a draft EIR to incorporate a full project description, including reasonably foreseeable future phases of the project, and that contains sufficient information to evaluate and review the project's

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environmental impacts. Please include a complete description of the following Project components in the Project description:

- Footprints of permanent Project features and temporarily impacted areas, such as staging areas and access routes, including a construction schedule, activities, equipment, and crew sizes.
- Anticipated utility upgrade areas and associated impacts from the work.
- Footprint of temporary staging areas.
- Encroachments into riparian habitats, wetlands, and other sensitive areas.
- Acreage of temporary and permanent impacts to woodlands on the Project site, including the approximate size (diameter at breast height) of any trees, especially oak trees, proposed for removal.
- Area and plans for any proposed buildings/structures, ground-disturbing activities, fencing, paving, stationary machinery, landscaping, and storm water systems.
- Operational features of the Project, including level of anticipated human presence (describe seasonal or daily peaks in activity, if relevant), artificial lighting/light reflection, noise and greenhouse gas generation, traffic generation, and other features.

IMPACT ANALYSIS AND MITIGATION MEASURES

The CEQA Guidelines (Cal. Code Regs., tit. 14, § 15126.2) require a draft EIR to discuss all direct and indirect impacts (temporary and permanent) the Project may cause. This includes evaluating and describing impacts, such as:

- Potential for “take” (Fish & G. Code, § 86) of special-status species;
- Locations and acreage of encroachment into riparian habitat and other sensitive areas;
- Loss or modification of breeding, nesting, dispersal and foraging habitat, including vegetation removal, alteration of soils and hydrology, and removal of habitat structural features (e.g., snags, roosts, overhanging banks);
- Permanent and temporary habitat disturbances associated with ground disturbance, noise, lighting, reflection, air pollution, traffic, or human presence; and
- Impacts to rare and special-status plant species and their habitat.

The draft EIR also should identify reasonably foreseeable future projects in the Project vicinity, disclose any cumulative impacts associated with these projects, determine the significance of each cumulative impact, and assess the significance of the project’s contribution to the impact (Cal. Code Regs., tit. 14, § 15355). Although a project’s impacts may be insignificant individually, its contributions to a cumulative impact may be considerable; a contribution to a significant cumulative impact, e.g., reduction of available habitat for a listed species, should be considered cumulatively considerable without mitigation to minimize or avoid the impact.

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Based on the comprehensive analysis of the direct, indirect, and cumulative impacts of the Project, the CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15021, 15063, 15071, 15126.2, 15126.4, 15370) direct the lead agency to consider and describe all feasible mitigation measures to avoid potentially significant impacts in the draft EIR, and/or mitigate significant impacts of the Project on the environment. This includes a discussion of take avoidance and minimization measures for special-status species, which are recommended to be developed in early consultation with the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and CDFW. These measures can then be incorporated as enforceable Project conditions to reduce potential impacts to biological resources to less-than-significant levels.

Fully protected species such as white-tailed kite may not be taken or possessed at any time (Fish & G. Code, § 3511). Therefore, CDFW recommends the draft EIR include measures to ensure complete take avoidance of such fully protected species.

Instream Flow Requirements and Fish and Game Code Section 5937

CDFW agrees that a long-term bypass plan be developed to adequately address the needs of aquatic resources. Instream flow studies will inform the decision of what is necessary to keep fisheries resources below Rector Dam in good condition. To this end, CDFW recommends that the draft EIR address the following concerns regarding flows:

- How minimum flows in Rector Creek will be maintained during construction.
- How adequate flows will be maintained to CDFW's Silverado Fisheries Base (SFB) to avoid interruptions.
- How any habitat between the dam and SFB that might result from the Project will be maintained with the new water conveyance system.
- How CalVet will ensure that the Project and future operations of the new water conveyance system, inclusive of releases to meet minimum instream flow requirements, will meet existing water demands and priorities on Rector Reservoir water.

CDFW AS DOWNSTREAM LANDOWNER

CDFW is a landowner operating SFB downstream of the dam. CDFW requests that the draft EIR identify where the new bypass valve will be installed relative to the existing hatchery valve. Also, please explain how the location and size of the valve will be determined, how and when the valve will be used, and how CalVet will address any impacts that may occur to SFB flows during use. Finally, please outline if the new valve will require additional communication with CDFW to ensure that required instream flows are met. CDFW's concern here is that the installation and operation of the new valve and bypass pipe will not interfere with the volume and quality of water SFB needs to conduct its normal operations.

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REGULATORY REQUIREMENTS

Lake and Streambed Alteration Agreement (Fish & G. Code, § 1600 et seq.)

CalVet will need to submit a notification to CDFW under Fish and Game Code section 1602 if the Project will substantially divert or obstruct the natural flow of, or substantially change the bed, bank, or channel of lower Rector Creek.

California Endangered Species Act (Fish & G. Code, § 2050 et seq.)

CalVet will need authorization under the California Endangered Species Act (CESA) if the Project could result in “take” of a plant or animal listed under CESA, either during construction or over the life of the Project. If the Project could impact a CESA-listed species, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures identified in the draft EIR may be required in order to obtain take authorization.

CEQA mandates the lead agency to make a Finding of Significance if a project is likely to substantially impact threatened or endangered species (Pub. Resources Code, §§ 21001, subd. (c), 21083; Cal. Code Regs., tit. 14, §§ 15380, 15064, 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the lead agency makes and supports Findings of Overriding Consideration (FOC). However, the lead agency’s FOC does not eliminate the Project proponent’s obligation to comply with CESA.

FILING FEES

CDFW reminds CalVet that the lead agency will need to pay a filing fee for the Project pursuant to Fish and Game Code section 711.4 (see also Pub. Resources Code, § 21089). Fees are payable upon filing of the Notice of Determination by the lead agency.

If you have any questions, please contact Mr. Garrett Allen, Environmental Scientist, at garrett.allen@wildlife.ca.gov; or Ms. Karen Weiss, Senior Environmental Scientist (Supervisory), at karen.weiss@wildlife.ca.gov.

cc: State Clearinghouse